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Attorneys for Plaintiff  
United States of America

IN THE DISTRICT COURT OF GUAM

UNITED STATES OF AMERICA

Plaintiff,

v.

MARWAN SHIPPING & TRADING CO.,  
FIVE SEAS SHIPPING CO., LLC, and S.J.  
GARGRAVE SYNDICATE 2724, in personam,

Defendants.

AND CROSS-CLAIMS, COUNTERCLAIM,  
AND CLAIM IN INTERVENTION.

ANSWER OF UNITED STATES TO  
CROSS-CLAIM OF DEFENDANT GARGRAVE

1

**FILED**

DISTRICT COURT OF GUAM

SEP 15 2006

MARY L.M. MORAN  
CLERK OF COURT

CIVIL NO. 06-00011

1 The Answer of the United States to the Cross-claims of defendant S.J. GARGRAVE  
2 SYNDICATE 2724 ("Gargrave") admits, denies, and alleges on information and belief as  
3 follows:

4 1. Paragraph 1 alleges matters of law to which no response is required. To the  
5 extent that a response would be required, denies the allegations of Paragraph 1, except admits  
6 and alleges that this is a case of admiralty and maritime jurisdiction within the meaning of  
7 Rule 9(h) of the Federal Rules of Civil Procedure and that the United States of America has  
8 waived its sovereign immunity from suit and consented to be sued herein, if at all, only  
9 pursuant to the provisions of the Suits in Admiralty Act, 46 U.S.C. §§ 741-752, or, dependent  
10 upon the facts, the Public Vessels Act, 46 U.S.C. §§ 781-790, which incorporates the  
11 consistent provisions of the Suits in Admiralty Act, 46 U.S.C. §§ 741-752.

12 2. Denies the allegations of Paragraph 2 for lack of knowledge and information,  
13 except admits and alleges that at all relevant times Gargrave was in the business of providing  
14 marine insurance, that its principal place of business was in London, England, and that it was  
15 doing business in the United States and Guam and within this district and within the  
16 jurisdiction of this Court.

17 3. Admits the allegations of Paragraph 3.

18 4. Admits the allegations of Paragraph 4.

19 5. Denies the allegations of Paragraph 5, except admits that the United States is  
20 the plaintiff herein and that the United States Coast Guard is an agency of the United States,  
21 a sovereign entity, and, accordingly, acts pursuant to, *inter alia*, the Constitution, statutes,  
22 and regulations in various ports and waters, including, but not limited to, the Port of Apra,  
23 Guam.

24 6. Answering the allegations of Paragraph 6, no answer is required on the part of  
25 the United States since said Paragraph asserts allegations against parties other than the  
26 United States. To the extent that the allegations of said Paragraph could be construed to  
27

1 allege fault or liability against the United States, the United States denies the allegations of  
2 Paragraph 6.

3 7. Answering the allegations of Paragraph 7, no answer is required on the part of  
4 the United States since said Paragraph asserts allegations against parties other than the  
5 United States. To the extent that the allegations of said Paragraph could be construed to  
6 allege fault or liability against the United States, the United States denies the allegations of  
7 Paragraph 7.

8 8. Answering the allegations of Paragraph 8, no answer is required on the part of  
9 the United States since said Paragraph asserts allegations against parties other than the  
10 United States. To the extent that the allegations of said Paragraph could be construed to  
11 allege fault or liability against the United States, the United States denies the allegations of  
12 Paragraph 8.

13 9. Answering the allegations of Paragraph 9, no answer is required on the part of  
14 the United States since said Paragraph asserts allegations against parties other than the  
15 United States. To the extent that the allegations of said Paragraph could be construed to  
16 allege fault or liability against the United States, the United States denies the allegations of  
17 Paragraph 9.

18 10. Answering the allegations of Paragraph 10, no answer is required on the part  
19 of the United States since said Paragraph asserts allegations against parties other than the  
20 United States. To the extent that the allegations of said Paragraph could be construed to  
21 allege fault or liability against the United States, the United States denies the allegations of  
22 Paragraph 10.

23 11. Answering the allegations of Paragraph 11, no answer is required on the part  
24 of the United States since said Paragraph asserts allegations against parties other than the  
25 United States. To the extent that the allegations of said Paragraph could be construed to  
26 allege fault or liability against the United States, the United States denies the allegations of  
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Paragraph 11.

12. Answering the allegations of Paragraph 12, no answer is required on the part of the United States since said Paragraph asserts allegations against parties other than the United States. To the extent that the allegations of said Paragraph could be construed to allege fault or liability against the United States, the United States denies the allegations of Paragraph 12.

13. Answering the allegations of Paragraph 13, no answer is required on the part of the United States since said Paragraph asserts allegations against parties other than the United States. To the extent that the allegations of said Paragraph could be construed to allege fault or liability against the United States, the United States denies the allegations of Paragraph 13.

14. Answering the allegations of Paragraph 14, no answer is required on the part of the United States since said Paragraph asserts allegations against parties other than the United States. To the extent that the allegations of said Paragraph could be construed to allege fault or liability against the United States, the United States denies the allegations of Paragraph 14.

15. Answering the allegations of Paragraph 15, no answer is required on the part of the United States since said Paragraph asserts allegations against parties other than the United States. To the extent that the allegations of said Paragraph could be construed to allege fault or liability against the United States, the United States denies the allegations of Paragraph 15.

16. Answering the allegations of Paragraph 16, no answer is required on the part of the United States since said Paragraph asserts allegations against parties other than the United States. To the extent that the allegations of said Paragraph could be construed to allege fault or liability against the United States, the United States denies the allegations of Paragraph 16.

1        17.    Answering the allegations of Paragraph 17, no answer is required on the part  
2 of the United States since said Paragraph asserts allegations against parties other than the  
3 United States. To the extent that the allegations of said Paragraph could be construed to  
4 allege fault or liability against the United States, the United States denies the allegations of  
5 Paragraph 17.

6        18.    Answering the allegations of Paragraph 18, no answer is required on the part  
7 of the United States since said Paragraph asserts allegations against parties other than the  
8 United States. To the extent that the allegations of said Paragraph could be construed to  
9 allege fault or liability against the United States, the United States denies the allegations of  
10 Paragraph 18.

11        19.    Answering the allegations of Paragraph 19, no answer is required on the part  
12 of the United States since said Paragraph asserts allegations against parties other than the  
13 United States. To the extent that the allegations of said Paragraph could be construed to  
14 allege fault or liability against the United States, the United States denies the allegations of  
15 Paragraph 19.

16        20.    Answering the allegations of Paragraph 20, no answer is required on the part  
17 of the United States since said Paragraph asserts allegations against parties other than the  
18 United States. To the extent that the allegations of said Paragraph could be construed to  
19 allege fault or liability against the United States, the United States denies the allegations of  
20 Paragraph 20.

21        21.    Answering the allegations of Paragraph 21, no answer is required on the part  
22 of the United States since said Paragraph asserts allegations against parties other than the  
23 United States. To the extent that the allegations of said Paragraph could be construed to  
24 allege fault or liability against the United States, the United States denies the allegations of  
25 Paragraph 21.

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1 22. Answering the allegations of Paragraph 22, no answer is required on the part  
2 of the United States since said Paragraph asserts allegations against parties other than the  
3 United States. To the extent that the allegations of said Paragraph could be construed to  
4 allege fault or liability against the United States, the United States denies the allegations of  
5 Paragraph 22.

6 23. Answering the allegations of Paragraph 23, no answer is required on the part  
7 of the United States since said Paragraph asserts allegations against parties other than the  
8 United States. To the extent that the allegations of said Paragraph could be construed to  
9 allege fault or liability against the United States, the United States denies the allegations of  
10 Paragraph 23.

11 24. Denies the allegations of Paragraph 24.

12 25. Denies the allegations of Paragraph 25.

13 26. Denies the allegations of Paragraph 26.

14 27. Denies the allegations of Paragraph 27.

15 AS AND FOR A FIRST AFFIRMATIVE AND  
16 COMPLETE DEFENSE, THE UNITED STATES  
17 ALLEGES ON INFORMATION AND BELIEF AS FOLLOWS:

18 28. Gargrave's cross-claims and action fail to state claims upon which relief can  
19 be granted.

20 AS AND FOR A SECOND AFFIRMATIVE AND  
21 COMPLETE DEFENSE, THE UNITED STATES  
22 ALLEGES ON INFORMATION AND BELIEF AS FOLLOWS:

23 29. If Gargrave sustained injuries and damages by reason of the matters alleged in  
24 the cross-claims, which is denied, then said injuries and damages were caused in whole or  
25 in part by the acts of third parties and were not caused or contributed to in any manner by any  
26 actions or fault of the United States of America, its officers, agents, vessels, crew, servants,  
27



1 employees or others for whom it was responsible.

2 AS AND FOR A THIRD AFFIRMATIVE AND  
3 COMPLETE DEFENSE, THE UNITED STATES  
4 ALLEGES ON INFORMATION AND BELIEF AS FOLLOWS:

5 30. If Gargrave sustained injuries and damages by reason of the matters alleged in  
6 the cross-claims, which is denied, then said injuries and damages were caused in whole or  
7 in part by said Gargrave's own actions and were not caused in any manner by any actions or  
8 fault of the United States of America, its officers, agents, vessels, crew, servants, employees  
9 or others for whom it was responsible.

10 AS AND FOR A FOURTH AFFIRMATIVE AND  
11 COMPLETE DEFENSE, THE UNITED STATES  
12 ALLEGES ON INFORMATION AND BELIEF AS FOLLOWS:

13 31. The Court lacks subject matter jurisdiction over Gargrave's cross-claims and  
14 action.

15 AS AND FOR A FIFTH AFFIRMATIVE AND  
16 COMPLETE DEFENSE, THE UNITED STATES  
17 ALLEGES ON INFORMATION AND BELIEF AS FOLLOWS:

18 32. The Court lacks subject matter jurisdiction over Gargrave's cross-claims and  
19 action since said cross-claims and action solely allege matters of discretionary functions and  
20 acts for which the United States of America has not waived sovereign immunity and  
21 consented to be sued.

22 AS AND FOR A SIXTH AFFIRMATIVE AND  
23 COMPLETE DEFENSE, THE UNITED STATES  
24 ALLEGES ON INFORMATION AND BELIEF AS FOLLOWS:

25 33. The Court lacks subject matter jurisdiction over Gargrave's cross-claims and  
26 action since said cross-claims and action solely allege matters of political questions for which  
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1 the United States of America has not waived sovereign immunity and consented to be sued.

2 AS AND FOR A SEVENTH AFFIRMATIVE AND  
3 COMPLETE DEFENSE, THE UNITED STATES  
4 ALLEGES ON INFORMATION AND BELIEF AS FOLLOWS:

5 34. The Court lacks subject matter jurisdiction over Gargrave's cross-claims and  
6 action since said cross-claims and action solely allege matters which are subject to the  
7 Constitutional doctrine of separation of powers for which the United States of America has  
8 not waived sovereign immunity and consented to be sued.

9 AS AND FOR AN EIGHTH AFFIRMATIVE AND  
10 COMPLETE DEFENSE, THE UNITED STATES  
11 ALLEGES ON INFORMATION AND BELIEF AS FOLLOWS:

12 35. The Court lacks subject matter jurisdiction over Gargrave's cross-claims and  
13 action since said cross-claims and action solely allege law enforcement matters for which the  
14 United States of America has not waived sovereign immunity and consented to be sued.

15 AS AND FOR A NINTH AFFIRMATIVE AND  
16 COMPLETE DEFENSE, THE UNITED STATES  
17 ALLEGES ON INFORMATION AND BELIEF AS FOLLOWS:

18 36. Gargrave's cross-claims and action are barred pursuant to estoppel.

19 AS AND FOR A TENTH AFFIRMATIVE AND  
20 COMPLETE DEFENSE, THE UNITED STATES  
21 ALLEGES ON INFORMATION AND BELIEF AS FOLLOWS:

22 37. Gargrave's cross-claims and action are barred pursuant to waiver.

23 AS AND FOR AN ELEVENTH AFFIRMATIVE AND  
24 COMPLETE DEFENSE, THE UNITED STATES  
25 ALLEGES ON INFORMATION AND BELIEF AS FOLLOWS:

26 38. Gargrave failed to mitigate its damages, which claims of damages and claims  
27



1 of liability upon which they are based are fully denied by the United States.

2 AS AND FOR A TWELFTH AFFIRMATIVE AND  
3 PARTIAL DEFENSE, THE UNITED STATES  
4 ALLEGES ON INFORMATION AND BELIEF AS FOLLOWS:

5 39. To the extent Gargrave seeks interest on its claims, which claims are denied,  
6 Gargrave's prayer for interest would be subject to the provisions and limitations of the Public  
7 Vessels Act, 46 U.S.C. §§ 781-790, which incorporates the consistent provisions of the Suits  
8 in Admiralty Act, 46 U.S.C. §§ 741, *et seq.*, and not otherwise.

9 AS AND FOR A THIRTEENTH AFFIRMATIVE AND  
10 PARTIAL DEFENSE, THE UNITED STATES  
11 ALLEGES ON INFORMATION AND BELIEF AS FOLLOWS:

12 40. Gargrave's prayer for attorney's fees is barred since the United States has not  
13 waived its sovereign immunity for such claims in this admiralty action.

14 AS AND FOR A FOURTEENTH AFFIRMATIVE  
15 DEFENSE, THE UNITED STATES  
16 ALLEGES ON INFORMATION AND BELIEF AS FOLLOWS:

17 41. Gargrave's claim of damages, which claims of damages and claims of liability  
18 upon which they are based are fully denied by the United States, are subject to set-off and  
19 offset.

20 AS AND FOR A FIFTEENTH AFFIRMATIVE  
21 DEFENSE, THE UNITED STATES  
22 ALLEGES ON INFORMATION AND BELIEF AS FOLLOWS:

23 42. Gargrave's claim of damages, which claims of damages and claims of liability  
24 upon which they are based are fully denied by the United States, are subject to recoupment.

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1 AS AND FOR A SIXTEENTH AFFIRMATIVE  
2 DEFENSE, THE UNITED STATES  
3 ALLEGES ON INFORMATION AND BELIEF AS FOLLOWS:

4 43. Gargrave lacks standing with respect to its cross-claims and action.

5 WHEREFORE, the United States of America prays as follows:

6 1. That Gargrave's cross-claims and action against the United States be dismissed  
7 with prejudice and with all costs;

8 2. That the United States of America be granted judgment and damages against  
9 all defendants, including Gargrave, pursuant to the Complaint of the United States of  
10 America herein, including payment of interest, costs, disbursements, and attorneys' fees;

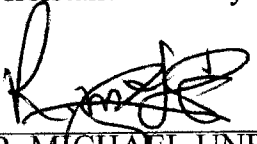
11 3. The United States of America expressly reserves the right to amend this  
12 Answer to Cross-claims, as may be necessary;

13 4. For such other relief as the Court deems just and proper in the premises.

14 Dated: September 12, 2006.

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26 Of Counsel

27 THOMAS H. VAN HORN  
28 National Pollution Funds Center  
United States Coast Guard  
Attorneys for Plaintiff United States of America

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on September 12, 2006, I served a copy of the foregoing Answer of the United States to Cross-Claims by S.G. Gargrave and Certificate of Service by first-class mail, postage prepaid, to:

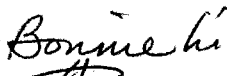
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